



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-3/51784

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 26, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to medical assistance, a hearing was held on February 21, 2002, at Barron, Wisconsin.

The issue for determination is whether the petitioner is entitled to an increase in the asset limit allowed under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Denise Westin, ESS  
Barron County Dept Of Human Services  
Courthouse Room 338  
330 E Lasalle Ave  
Barron, WI 54812

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Barron County.
2. The petitioner and his wife have a total of \$144,325.54 in assets. They seek to allocate all of those assets to the wife.
3. The petitioner and his wife have \$5,355.24 in Putnam stock that produces no income.

4. The remaining assets of the petitioner and his spouse produce \$588.82 per month.
5. The petitioner receives \$891 in social security each month. He also receives \$509.44 from a pension each month.
6. The petitioner's spouse receives \$443 in social security each month.
7. The county agency denied the petitioner's application for institutional medical assistance in May 2001 because his assets exceeded the program's limit.

### **DISCUSSION**

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets greater than \$100,000 but less than \$174,000 to assign one-half of their total assets to the spouse still living in the community. §49.455(6)(b)3, Stats. *MA Handbook*, Appendix §23.4.2. An institutionalized person can have up to \$2,000 in assets, which has the effect of increasing the total assets a couple may retain by that amount. Nevertheless, if the community spouse's income falls short of his needs, he may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,935 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

Only resources that generate income can be reallocated at a fair hearing to the community spouse and exempted from the medical assistance asset limit. DHA Decision No. MRA-65/49853, *citing* §49.455(8)(d), Stats.; DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394. In this matter the petitioner has \$5,355.24 in Putnam stock that produces no income. Because this asset is not exempt, it places the petitioner over the \$2,000 asset limit for medical assistance, which makes him ineligible for the program.

### **CONCLUSIONS OF LAW**

1. The Division of Hearings and Appeals may not approve the petitioner's request to assign all of the total assets held by him and his wife to his wife because more than \$2,000 of those assets do not produce income.
2. The petitioner is ineligible for institutional medical assistance because his assets exceed the program's limit.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition herein be and the same hereby is dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 26th day of  
March, 2002

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/sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
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